

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7777

BILL NUMBER: SB 525

NOTE PREPARED: Feb 26, 2007

BILL AMENDED: Feb 22, 2007

SUBJECT: Indiana Fueled Energy Investment Tax Credit.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) The bill creates the Indiana Fueled Energy Investment Tax Credit for taxpayers that place a new energy production facility that utilizes Indiana fuel into service. It specifies that the total amount of Indiana Fueled Energy Investment Tax Credits may not exceed \$50,000,000 for all taxpayers and all taxable years.

The bill provides that the total amount of Ethanol Production Tax Credits for taxpayers that produce at least 40,000,000 gallons of cellulosic ethanol in a year may not exceed \$20,000,000 for all taxpayers for all taxable years. The bill provides that a taxpayer may not sell, assign, convey, or otherwise transfer an Ethanol Production Tax Credit.

The bill specifies that for the proposed Indiana Fueled Energy Investment Tax Credit and the existing Coal Gasification Technology Investment Tax Credit, the Indiana Economic Development Corporation is required to enter into an agreement with an applicant for a credit only if the Corporation decides to award a tax credit to the applicant.

Effective Date: July 1, 2007; January 1, 2008.

Explanation of State Expenditures: (Revised) *Department of State Revenue (DOR)*: The DOR will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the Fueled Energy Investment Tax Credit. The DOR's current level of resources should be sufficient to implement these changes.

Indiana Economic Development Corporation (IEDC): The bill will require the IEDC to accept and review applications for the Fueled Energy Investment Tax Credit, and make determinations as to tax credit awards.

The bill requires the IEDC to enter into an agreement with tax credit recipients specifying project information and operational information relating to the energy facility to be constructed. The bill requires the Office of Energy and Defense Development to provide any technical assistance requested by the IEDC. The funds and resources required to implement this tax credit program could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The February 19, 2007, state vacant position report indicates that the IEDC has 33 vacant full-time positions.

Explanation of State Revenues: (Revised) *Ethanol Production Tax Credit:* The bill provides for a separate tax credit for cellulosic ethanol production, provided the taxpayer produces at least 40 M gallons of cellulosic ethanol in a taxable year. Under the credit, the Indiana Economic Development Corporation (IEDC) would be able to determine the maximum credit for a taxpayer, but the bill would limit the total credits awarded to \$20 M for all taxpayers for all taxable years. The bill also specifies that the current \$50 M aggregate limit on all tax credits for grain ethanol production and biodiesel production does not apply to the new tax credit for cellulosic ethanol production.

Background Information: Current statute provides credits against a taxpayer's Sales and Use Tax, AGI Tax, Financial Institutions Tax, or Insurance Premiums Tax liability for production of ethanol, biodiesel, and blended biodiesel. The tax credits are: (1) \$1.00 for each gallon of biodiesel manufactured in Indiana and used to produce blended biodiesel; (2) \$0.02 per gallon of blended biodiesel produced in Indiana using biodiesel produced in Indiana; and (3) \$0.125 per gallon of ethanol produced at an eligible facility in Indiana. The maximum credits that may be awarded to a taxpayer for ethanol production are specified below:

Ethanol Production Credit	
Maximum Credit	Annual Production Level
\$2 M	At least 40 M gallons, but less than 60 M gallons.
\$3 M	At least 60 M gallons.

In addition, the taxpayer limit for the biodiesel and blended biodiesel production credits is \$3 M, with provision for the IEDC to increase this limit to \$5 M for the biodiesel production credit. Current statute also limits the total ethanol and biodiesel production credits for all taxpayers and all taxable years to \$50.0 M, with allocations of at least \$4.0 M under this cap to each tax credit. The IEDC has awarded a total of \$50.0 M in ethanol and biodiesel tax credits at this time - \$32.0 M for 12 ethanol production facilities; \$14.0 M for four biodiesel production facilities; and \$4.0 M for two blended biodiesel production facilities.

Grain ethanol and cellulosic ethanol are the same product, but are produced utilizing different feedstocks and processes. Grain ethanol is produced from corn, wheat, or soybeans. Cellulosic ethanol can be produced from agricultural plant waste, plant wastes from industrial processes, and energy crops grown specifically for fuel production, such as switchgrass.

Fueled Energy Investment Tax Credit: The bill establishes a nonrefundable tax credit for “qualified investment” in facilities to produce and transmit energy from: (1) gasified, liquified, or methanized biomass produced in Indiana, Indiana coal, petroleum coke produced in Indiana, or oil shale located in Indiana; or (2)

coal mine methane when used in the production of power. The credit may be claimed by individual and corporate taxpayers against the Adjusted Gross Income (AGI) Tax, Insurance Premiums Tax, Financial Institutions Tax, or Utility Receipts Tax liability. The tax credit is equal to 10% of the qualified investment. The bill limits the total credits awarded under the tax credit to \$50 M for all taxpayers and all taxable years. The bill requires the taxpayer to take the credit in equal installments over 10 years. The potential fiscal impact of this tax credit is indeterminable and depends on tax credit approvals by the IEDC.

To obtain the tax credit, a taxpayer must apply to the IEDC before making the investment. Upon determination by the IEDC that the proposed investment satisfies the tax credit requirements, it must enter into an agreement with the taxpayer. The bill requires a taxpayer to be in compliance with the agreement each year to receive an annual installment of the tax credit. The agreement must include:

- (1) A description of the project.
- (2) The first year the credit will be claimed.
- (3) The amount of tax credit allowed each year.
- (4) A requirement that the taxpayer must maintain operations at the project site for the 10 years the credit is available.
- (5) A minimum employee compensation requirement at the site.
- (6) A minimum total payroll requirement at the site.
- (7) A requirement that the fuel used is 100% Indiana fuel (biomass produced in Indiana, Indiana coal, petroleum coke produced in Indiana, oil shale located in Indiana, or coal mine methane).
- (8) A requirement that the facility will comply with energy efficiency and emission standards recommended by the Office of Energy and Defense Development and the IEDC.

Background Information: The tax credit is nonrefundable and may not be carried back or carried forward. In addition, the tax credit is not assignable. The bill specifies the manner in which the credit may be taken by a member of an affiliated group of corporations filing a consolidated corporate tax return or by shareholders, partners, or members of the pass through entity. Since the credit is effective beginning in tax year 2008 and dependent on IEDC approval, the fiscal impact likely would not commence before FY 2009.

Revenue from the Corporate AGI tax, the Insurance Premiums Tax, and the Financial Institutions Tax is deposited in the state General Fund. Eighty-six percent of the revenue from the Individual AGI Tax is deposited in the state General Fund, and 14% is deposited in the Property Tax Replacement Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Indiana Economic Development Corporation; Office of Energy and Defense Development; Department of State Revenue.

Local Agencies Affected:

Information Sources:

Fiscal Analyst: Jim Landers, 317-232-9869.